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| APPLICATION NO.  | FILING DATE | FIRST NAMED INVENTOR       | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------------|---------------------|------------------|
| 09/988,112   | 11/19/2001  | Marcelo Daniel Baru Fassio | N164 0024 GNM/sks   | 8074             |
| 27717  | 7590        | 03/08/2005                 | EXAMINER            |                  |
| SEYFARTH SHAW<br>55 EAST MONROE STREET<br>SUITE 4200<br>CHICAGO, IL 60603-5803 |             |                            | NASSER, ROBERT L    |                  |
|  |             |                            | ART UNIT            | PAPER NUMBER     |
|  |             |                            | 3736                |                  |

DATE MAILED: 03/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/988,112

Applicant(s)

BARU FASSIO, MARCELO  
DANIEL

Examiner

Robert L. Nasser

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 08 November 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 29-46 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 29, 31, 32, 40-46 is/are rejected.
- 7) ☒ Claim(s) 30 and 33-39 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_.

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35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 29-46 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Claims 29-46 are non-statutory in that claim 29, as amended recites that the signal line is connected to the body ground of the patient. This recites a positive relationship to the human body. The human body is non-statutory subject matter and cannot be positively recited. As such, the claim is non-statutory. Applicant should amend the claim to recite that the common line is adapted to connect body ground to ...

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 29, 31, 32, and 40-46 are rejected under 35 U.S.C. 102(b) as being anticipated by the Papathanasiou article entitled "An implantable CMOS Signal . . . ." (hereinafter Papa). Papa shows a circuit receiving a signal from a nerve on a common line that passes through a filter to 2 amplifiers (see p. v-238, left column, line 30), where the amplifiers have a differential mosfet transistor arrangement, M1 and M2. This arrangement has a "low" input current and functions as a first protection circuit. The system further includes a line connectable to body ground, through the resistor located

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between the capacitor and the amplifier input. In addition, since the circuit is used for the identical purpose as the current circuit, it would have the same operating parameters, recited in claims 40-46.

Claims 30 and 33-39 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Claim 30 defines over the art of record in that none of the art has the current mirror, as claimed. Claim 33 defines over the art in that none of the art has the DC restoration circuit. Claims 34-39 define over the art of record in that none of the art has the band pass amplifier, as recited.

Applicant's arguments filed 11/8/2004 have been fully considered but they are not persuasive.

Applicant has asserted that there is not a second protection circuit as recited in the claim. The examiner notes that the AC coupling stage to the left of the amplifier in figure 2 meets the claim limitation as to the second protection circuit.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the

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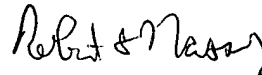
shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert L. Nasser whose telephone number is (571) 272-4731. The examiner can normally be reached on Mon-Fri, variable hours.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on (571) 272-4726. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Robert L. Nasser  
Primary Examiner  
Art Unit 3736



ROBERT L. NASSER  
PRIMARY EXAMINER